Memorandum

MIAMI-DADE COUNTY

Date: December 6, 2005

Agenda Item No. 13(B)(1)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Murray A. Greenberg
County Attorney

Subject: Agripost v. Miami-Dade County, Case No. 04-21743-CIV-Martinez/Klein

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After lengthy litigation, a final summary judgment has been entered in favor of Miami-Dade County in the above case.

The case arose out of the County's 1991 decision to revoke a conditional, revocable unusual use zoning permit awarded to Agripost to construct and operate a plant to convert garbage to fertilizer. The County had revoked the permit when the plant caused order and mold to accumulate in the surrounding neighborhood, including a nearby school. Agripost alleged that the County's revocation operated to take its property without just compensation, and demanded over $135 million in damages.

The case is the last in a series of lawsuits arising out of the revocation. Agripost first appealed the revocation to the state appellate courts, and lost at both the circuit and district court levels. In 1994, it then filed a federal action nearly identical to the present case, but the federal court dismissed that action on the grounds that Agripost was required to seek compensation for its allegedly taken property in state court first. In 1997, Agripost filed a state court action for inverse condemnation, again demanding $135 million in damages, and lost. The Third District Court of Appeals affirmed, and the Florida Supreme Court rejected Plaintiff's request for discretionary review.

The County was represented by Assistant County Attorneys James J. Allen, Thomas Goldstein, Scott Fabricius, M. Leigh MacDonald, and Bernard Pastor; and former Assistant County Attorney Robert L. Krawcheck.

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

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FROM: Murray A. Greenberg, County Attorney

SUBJECT: Agenda Item No. 13(B)(1)

Please note any items checked.

_____	**"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Bid waiver requiring County Manager's written recommendation**
_____	**Ordinance creating a new board requires detailed County Manager's report for public hearing**
_____	**Housekeeping item (no policy decision required)**
✓	**No committee review**

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 04-21743-CIV-MARTINEZ-BANDSTRA

AGRIPOST, LLC, *et al.*,

Plaintiffs,

vs.

MIAMI-DADE COUNTY,

Defendant.
_____/

ORDER GRANTING DEFENDANT MIAMI-DADE COUNTY'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court upon Defendant Miami-Dade County's Motion to Dismiss with Prejudice or for Final Summary Judgment **(D.E. Nos. 21-1, 21-2)**, filed on October 8, 2004. This motion is fully briefed and ripe for adjudication. For the reasons set forth below, Defendant's Motion for Summary Judgment is granted and Defendant's Motion to Dismiss with prejudice is denied as moot.

I. Relevant Factual and Procedural Background

Plaintiffs allege that they entered into a contract with the County to build a solid waste composting plant; however, soon after the plant opened, Plaintiff's zoning permit was revoked. Plaintiffs have stated that as they lacked a zoning permit, "the plant had to remain closed, the lease terminated, and the plant became the property of the State of Florida." (D.E. No. 1 at 15). Plaintiffs therefore argue they were "deprived of 'all economically beneficial or productive use of' its property, without compensation." *Id.* Plaintiffs asserted one claim in their Complaint, a violation of 42 U.S.C. § 1983 for a taking under the Fifth Amendment. *Id.* A similar case was

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previously filed in this Court. The Court dismissed the federal takings claim, relying on *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97 (1985) and finding that the claim did "not become ripe until a plaintiff . . . [used] available state law procedures to obtain just compensation." (D.E. No. 25, Vol. II, Order at 365). Plaintiffs then filed suit in the Florida state court for Dade County alleging a federal takings claim but noting that they were pursuing these claims in state court "involuntarily" and reserving the right to pursue these claims in "a federal forum if necessary." (D.E. No. 25, Vol. I, Compl. at 35-36).[1] The Eleventh Circuit Court for Dade County entered summary judgment on Plaintiffs' claims including their federal takings claim, finding that "as a matter of law," . . . Plaintiffs . . . [were] not entitled to inverse condemnation damages for the revocation of a conditional revocable zoning approval as a result of their own violation of conditions." (D.E. No. 25, Vol. VI, Order Granting Defendant's Motion for Final Summary Judgment at 9, 15). The Florida Third District Court of Appeal affirmed, *see Agripost, Inc. v. Metropolitan Miami-Dade County*, 845 So. 2d 918 (Fla. 3d DCA 2003), and the Florida Supreme Court denied review. Defendants have filed a Motion to Dismiss with Prejudice or for Final Summary Judgment. This Court will address only Defendants' Motion for Summary Judgment.

II. Legal Standard

Under Federal Rule of Civil Procedure 56(c), a Motion for Summary Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

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[1]This Court has taken judicial notice of several other court proceedings involving these parties. (D.E. No. 44).

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and that the moving party is entitled to a judgment as a matter of law." The Supreme Court further explained the movant's burden in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) as follows:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Id. at 322. The Court further stated that "Rule 56(e) . . . requires a non-moving party to go beyond the pleadings and by [its] own affidavits or by the 'depositions, answers to interrogatories, and admissions on file' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324. By its very terms, this standard provides that "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there will be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). An issue of fact is "genuine" if the record taken as a whole could lead a rational trier of fact to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248; *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). It is "material" if it might affect the outcome of the case under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248.

III. Analysis

Defendant raises several arguments in their motion; however, this Court finds it is only necessary to address Defendant's res judicata argument, which this Court finds has merit.[2] Under

[2]The Court does note that to the extent Defendants are challenging the propriety of the state court order, such a challenge violates the Rooker-Feldman doctrine, which limits "the subject matter jurisdiction

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Florida law,[3]

> [f]or res judicata to apply, four elements must be established: "1) identity of the thing sued for; 2) identity of the cause of action; 3) identity of persons and parties of the action; and 4) identity of the quality of persons and parties of the action."

Selim v. Pan American Airways Corp., 889 So. 2d 149, 153 (Fla. 4th DCA 2004) (quoting *Signo v. Fla. Farm Bureau Cas. Ins. Co.*, 454 So. 2d 3, 4 (Fla. 4th DCA 1984)). This Court finds that the standard has been met as to all four elements based on Plaintiff's suit in the state court.

First, the suits meet the requirement that there be an "identity of the thing sued for." In the state court suit, Plaintiffs sought money damages for the federal takings claim violation. (D.E. No. 25 Vol. 1, Compl.). In this case, Plaintiffs have also sought money damages. (D.E. No. 1 at 15-16). The suits also have "identity of the cause of action." This identity "is a question of 'whether the facts or evidence necessary to maintain the suit are the same in both actions.'" *Tyson v. Viacom, Inc.*, 890 So. 2d 1205, 1209 (Fla. 4th DCA 2005) (*en banc*) (quoting *Albrecht v. State*, 444 So. 2d 8, 12 (Fla.1984), *superseded by statute on other grounds*, *Bowen v. Fla. Dep't*

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of federal district courts and courts of appeal over certain matters related to previous state court litigation." *Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001). The Eleventh Circuit Court of Appeals has defined this doctrine stating:

> Rooker-Feldman bars lower federal court jurisdiction where four criteria are met: (1) the party in federal court is the same as the party in state court; (2) the prior state court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment.

Amos v. Glynn County Board of Tax Assessors, 347 F.3d 1249, 1265 n.11 (11th Cir.2003) (internal citations omitted).

[3]"[W]hen a federal court exercises federal question jurisdiction and is asked to give *res judicata* effect to a state court judgment , it must apply the '*res judicata* principles of the law of the state whose decision is set up as a bar to further litigation.'" *Amey Inc. v. Gulf Abstract & Title , Inc.*, 758 F.2d 1486, 1509 (11th Cir. 1985) (quoting *Hernandez v. City of Lafayette*, 699 F.2d 734, 736 (5th Cir. 1983)).

of Envtl. Regulation, 448 So. 2d 566 (Fla. 2d DCA 1984)). Here, Plaintiffs are asserting the identical federal takings claim; therefore, the facts and evidence necessary to maintain this suit are the same in both actions. The third element which requires an identity of the persons or parties in both suits is also met as both suits involve the same parties. *See* (D.E. No. 1); (D.E. No. 25, Vol. 1, Compl.). Finally, the fourth element, requiring an identity of the quality of persons and parties is also met because as already stated both actions involved the same parties.

Plaintiffs argue that their specific reservation of federal jurisdiction in regard to their federal takings claim in their state suit prevents the state suit from having preclusive effect in this case. However, a recent United States Supreme Court case forecloses this argument. In *San Remo Hotel v. City and County of San Francisco, CA*, 125 S. Ct. 2491 (2005), hotel owners challenged the constitutionality of a hotel conversion ordinance, arguing that the ordinance was a taking in violation of the Fifth Amendment. The federal district court granted summary judgment and required the plaintiffs to first seek compensation in state court. *Id.* at 2497. The Ninth Circuit Court of Appeals affirmed this decision. *Id.* In the state court suit, plaintiffs reserved the right to return to federal court and adjudicate their federal takings claim. *Id.* However, despite the reservation, the state court decided the takings claim under both California law and federal law. *Id.* at 2498. Plaintiffs then returned to federal district court and the district court held that plaintiff's claim was barred by "issue preclusion." *Id.* at 2499. "The District Court reasoned that 28 U.S.C. § 1738 requires federal courts to give preclusive effect to any state-court judgment that would have preclusive effect under the laws of the State in which the judgment was rendered." *Id.* at 2499-2500. The court found that because the California court "interpreted the relevant substantive takings law coextensively with federal law, petitioners' federal claims constituted the

same claims that had already been resolved in state court. *Id.* at 2500. The Ninth Circuit Court of Appeals affirmed. *Id.* The United States Supreme Court also affirmed finding that "[a]lthough petitioners were certainly entitled to reserve some of their federal claims . . .their . . . expectation that their reservation would fully negate the preclusive effect of the state-court judgment with respect to any and all federal issues that might arise in the future federal litigation" was erroneous. *Id.* at 2501-02. The Court noted that there was no ultimate federal right to litigate federal claims in a federal court. *Id.* at 2504. The Court then held federal takings claims actually litigated in state court are not exempt from the full faith and credit statute, 28 U.S.C. § 1738, which encompasses the doctrines of res judicata and collateral estoppel. *Id.* at 2500, 2505-07.

Thus, any argument that Plaintiff's reservation of this issue for the federal court precludes the application of res judicata to this action is without merit. Here, it is clear that the federal takings claim was actually litigated in this case as the Court entered a specific order on this count. *See* (D.E. No. 25, Vol. VI, Order Granting Defendant's Motion for Final Summary Judgment). Therefore, as all of the elements of res judicata[4] have been met. It is hereby:

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[4]Defendants have also argued that this case is precluded by the doctrine of collateral estoppel. Under Florida law,

> [c]ollateral estoppel is a judicial doctrine which in general terms prevents identical parties from relitigating the same issues that have already been decided. The essential elements of the doctrine are that the parties and issues be identical, and that the particular matter be fully litigated and determined in a contest which results in a final decision of a court of competent jurisdiction. The courts have emphasized that collateral estoppel precludes relitigation of issues actually litigated in a prior proceeding.

Dep't of Health & Rehab. Servs. v. B.J.M., 656 So.2d 906, 910 (Fla. 1995) (citing *Mobil Oil Corp. v. Shevin*, 354 So. 2d 372, 374 (Fla. 1977)).The court finds it unnecessary to discuss this issue in detail as the doctrine of res judicata bars this suit, however, this Court also finds that the elements of collateral estoppel have been met. Thus, this suit would also be barred by collateral estoppel.

ORDERED AND ADJUDGED that

1. Defendant Miami-Dade County's Motion for Summary Judgment **(D.E. Nos. 21-2)** is **GRANTED**. This case is **CLOSED** and all pending motions are **DENIED AS MOOT**.

2. Defendant Miami-Dade County's Motion to Dismiss with Prejudice **(D.E. No. 21-2) is DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 20 day of October, 2005.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Bandstra
All Counsel of Record